

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/04-01/15

Date: 5 July 2018

**TRIAL CHAMBER IX**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN UGANDA**

**IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN***

**Public redacted version of**

**Decision on Defence Request for Protective and Special Measures and Rule 75  
Assurances**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Benjamin Gumpert

**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 67 of the Rome Statute ('Statute'), Rules 75, 86, 87 and 88 of the Rules of Procedure and Evidence ('Rules') and Regulation 23 *bis* of the Regulations of the Court, issues the following 'Decision on Defence Request for Protective and Special Measures and Rule 75 Assurances'.

## **I. Procedural history and submissions**

1. On 4 June 2018, the defence for Mr Ongwen ('Defence') filed a request seeking in-court protective measures ('Protective Measures) for 21 of its witnesses, special measures pursuant to Rule 88 of the Rules for one witness and notice pursuant to Rule 75 of the Rules for four of its witnesses ('Request').<sup>1</sup>
2. The Defence requests pseudonyms and face distortion for 20 witnesses and the use of pseudonym, face and voice distortion for one of its witnesses.<sup>2</sup> Regarding the leave to provide assurances pursuant to Rule 75(1) of the Rules ('Rule 75 Assurances'), the Defence submits that these assurances should be provided to four witnesses because they might incriminate Joseph Kony, a suspect in another case.<sup>3</sup>
3. On 13 June 2018, the Office of the Prosecutor ('Prosecution') filed its response ('Response').<sup>4</sup> Therein, it defers to the Chamber in respect of the Protective

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<sup>1</sup> Defence Application for In-Court Protective Measures, Special Measures and Rule 75 Notice, ICC-02/04-01/15-1273-Conf. A corrected version was filed on 25 June 2018, ICC-02/04-01/15-1273-Conf-Corr. A public redacted version was filed on the same day, ICC-02/04-01/15-1273-Corr-Red.

<sup>2</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 23.

<sup>3</sup> Request, ICC-02/04-01/15-1273-Corr-Red, paras 4 and 77.

<sup>4</sup> Prosecution Response to Defence Application for Protective Measures, Special Measures and Rule 75 Notice, ICC-02/04-01/15-1283-Conf.

Measures and special measures pursuant to Rule 88 for 19 witnesses and opposes the Protective Measures with regard to two other witnesses.<sup>5</sup>

4. In relation to the Rule 75 Assurances the Prosecution announces that it is prepared to issue an undertaking that the testimony of the four witnesses will not be used against the other accused.<sup>6</sup> This, according to the Prosecution, makes any Rule 75 Assurances unnecessary.<sup>7</sup>
5. On 18 June 2018, the Common Legal Representative for Victims ('CLR') filed its response ('CLR Response').<sup>8</sup> Concerning the request for Protective and Special Measures, the CLR does not oppose the requests relating to 19 witnesses and repeats the arguments made by the Prosecution with regard to the other two.<sup>9</sup> In respect of the Rule 75 Assurances, the CLR submits that neither Rule 75 nor Rule 73(2) of the Rules applies and no notice can be given to the four witnesses.<sup>10</sup>

## **II. Preliminary matter**

6. The Single Judge notes that the Defence has filed a public-redacted version of its Request. He orders the Prosecution and the CLR to request reclassification of their responses as public or to file public-redacted versions of their filings, keeping in mind the redactions implemented in the public-redacted version of the Request and in this decision.

## **III. Analysis**

7. The Single Judge will first address the requests for protective and special measures and subsequently rule on the request to provide Rule 75 Assurances.

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<sup>5</sup> Response, ICC-02/04-01/15-1283-Conf, paras 1 and 6.

<sup>6</sup> Response, ICC-02/04-01/15-1283-Conf, para. 12.

<sup>7</sup> Response, ICC-02/04-01/15-1283-Conf, para. 11.

<sup>8</sup> CLR Response to "Defence Application for In-Court Protective Measures, Special Measures and Rule 75 Notice", ICC-02/04-01/15-1286-Conf.

<sup>9</sup> CLR Response, ICC-02/04-01/15-1286-Conf, paras 10-15.

<sup>10</sup> CLR Response, ICC-02/04-01/15-1286-Conf, paras 17-20.

### *1) Requests for Protective Measures*

8. The Single Judge recalls the decision on the Prosecution request for protective and special measures ('Protective and Special Measures Decision').<sup>11</sup> He incorporates the general considerations made in respect of Protective Measures,<sup>12</sup> underlining once again the balance which needs to be struck between the publicity of the proceedings and the protection of witnesses pursuant to Article 68(1) and (2) of the Statute, as well as the necessity to demonstrate an 'objectively justifiable risk' in order to justify the granting of in-court protective measures.
9. In determining whether Protective Measures are necessary, the Single Judge will conduct a case-by-case assessment for each witness.
10. As a general matter, should a request for Protective Measures be rejected, this is done without prejudice to a renewed assessment and decision on the necessity of Protective Measures should further information become available.

#### *(i) Witnesses D-6, D-110, D-130 and D-131*

11. The Single Judge notes that witnesses D-6, D-110, D-130 and D-131 are either children of Joseph Kony or were his wife.<sup>13</sup> The Single Judge further notes that these witnesses have previously experienced difficulties due to the public's knowledge of their connection with Joseph Kony.<sup>14</sup>
12. Considering the personal connection of the witnesses concerned to the leader of the Lord's Resistance Army ('LRA'), and taking into account the existence of prior incidents, the Single Judge finds that there is an objectively justifiable risk warranting Protective Measures. Accordingly, Protective Measures in form of

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<sup>11</sup> Decision on the "Prosecution's application for in-court protective and special measures", ICC-02/04-01/15-612-Conf. A public redacted version was filed on the same day, ICC-02/04-01/15-612-Red.

<sup>12</sup> Protective and Special Measures Decision, ICC-02/04-01/15-612-Red, paras 5-8.

<sup>13</sup> Request, ICC-02/04-01/15-1273-Corr-Red, paras 28, 63.

<sup>14</sup> Request, ICC-02/04-01/15-1273-Corr-Red, paras 29, 64.

face distortion, use of a pseudonym and private session for any information which could lead to the identification of witnesses D-6, D-110, D-130 and D-131 are granted.

(ii) *Witness D-7*

13. The Defence explains that D-7 [REDACTED]. It further describes that the family of the accused, [REDACTED], was verbally accosted and threatened in 2016. According to the Defence, the witness is frightened by this incident.<sup>15</sup>
14. The Single Judge notes that the security incident described by the Defence is unrelated to the witness himself. The only justification for this request is based on the subjective fears of the witness. In the absence of any objectively justifiable risk, the Single Judge rejects the request for Protective Measures for Witness D-7.

(iii) *Witnesses D-25, D-30 and D-75*

15. The Defence submits that witnesses D-25 and D-30 were abducted into the LRA, escaped and currently serve in the Ugandan People's Defence Force ('UPDF').<sup>16</sup> They are worried that their colleagues will treat them differently if it is known they are appearing as Defence witnesses. Further, with regard to witness D-25 the Defence submits that he lives away from his family and the witness worries that he would not be around should something happen to them.<sup>17</sup>
16. In respect of D-75, the Defence asserts essentially the same pattern: the witness was in the LRA and is now serving in the UPDF. The Defence argues that [REDACTED] and that the witness is afraid how people in the UPDF will treat

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<sup>15</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, paras 31-32.

<sup>16</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 34.

<sup>17</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 35.

him. The witness [REDACTED] which would make it hard for him to find a new job.<sup>18</sup>

17. The Defence argues that two Prosecution witnesses in similar positions received Protective Measures.<sup>19</sup> The Single Judge notes that for one of them, P-16, Protective Measures were granted for wholly different reasons.<sup>20</sup> For the other witness, P-440, the initial request for Protective Measures was rejected on grounds that there was no objectively justifiable risk, since the justification was based on a subjective general fear of retaliation.<sup>21</sup> Only after a subsequent concrete substantiation with further specific information did the Chamber grant Protective Measures for P-440.<sup>22</sup>

18. Regarding the additional concerns voiced by D-25, the Single Judge notes that this too is based purely on the subjective fears by the witness with no objective indicia. This is especially the case given that the local population are already aware of the fact that the witness was abducted by the LRA.<sup>23</sup>

19. Considering the above, the Single Judge finds that there is no objectively justifiable risk. Accordingly, the request for Protective Measures for D-25, D-30 and D-75 must be rejected.

*(iv) Witness D-26*

20. The Defence submits that D-26 lives in a village where no one knows that he was abducted by the LRA. The witness fears that the villagers 'shall extract revenge'

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<sup>18</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, paras 50-51.

<sup>19</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 35.

<sup>20</sup> Protective and Special Measures Decision, ICC-02/04-01/15-612-Red, paras 27-28. The reason provided in the decision was that P-16 was victimised as a child and returned to a community after having committed or having participated in crimes against members of the community.

<sup>21</sup> [REDACTED].

<sup>22</sup> See confidential E-mail by the Chamber on 30 January 2017 at 10:14 am and on 31 January 2017 at 14:08 pm.

<sup>23</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 35.

should he testify. The Defence further submits that he is away from his family for prolonged periods of time due to his profession.<sup>24</sup>

21. The Single Judge notes that the reasons provided for the request for Protective Measures for D-26 are entirely subjective. No information that an objective risk to the witness's safety or security exists is provided.
22. Accordingly, the request for Protective Measures for D-26 must be rejected.

*(v) Witness D-27*

23. The Defence explains that D-27 is a businessman and that it is not known in his village that the witness has spent time in the bush as an officer within the LRA. He is worried that people from his community might push him away and that his business will suffer. Further, the Defence submits that he is well-known throughout the LRA.<sup>25</sup>
24. The Single Judge notes that the only justification for the requested Protective Measures is the subjective fears of the witness. Accordingly the Single Judge finds that, in the absence of any objectively justifiable risk, the request for Protective Measures for D-27 must be rejected.

*(vi) Witnesses D-32 and D-135*

25. The Defence submits that the Chamber has already granted Protective Measures for these two former Prosecution witnesses and argues that these measures should still apply.<sup>26</sup>

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<sup>24</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 38.

<sup>25</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, para. 41.

<sup>26</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 43.



26. The Single Judge does not see any reason why the previous decision regarding protective measures of these two witnesses should be amended. Accordingly, he finds that the Protective Measures for D-32 and D-135 are still effective.

*(vii) Witness D-33*

27. The Defence submits that it is currently in the process of obtaining information about witness D-33 and explains that '[w]hen the Defence last met the witness, he stated that he wanted face and voice distortion'.<sup>27</sup>

28. The Single Judge does not have any information with which to conclude that this witness requires protective measures. The Defence itself concedes that it is in the process of acquiring further information about the witness. Therefore, the request for Protective Measures for witness D-33 is rejected.

*(viii) Witness D-36*

29. The Defence submits that D-36 is a former LRA member.<sup>28</sup> The Defence argues that [REDACTED].<sup>29</sup>

30. The Single Judge notes that the Defence has not even spoken to the witness in order to determine whether he wants Protective Measures or might prefer to testify openly. The arguments regarding [REDACTED] are concerns regarding the issue of self-incrimination, not the safety, physical and psychological well-being, dignity and privacy of the witness. The issue of assurances pursuant to Rule 74 is not subject of this request and will be decided at a later point in the

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<sup>27</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 44.

<sup>28</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, para. 45.

<sup>29</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, para. 46.

proceedings.<sup>30</sup> Accordingly, the Single Judge dismisses the request for Protective Measures for D-36.

(ix) *Witness D-72*

31. The Defence submits that the witness was part of the local defence unit ('LDU') at the Lukodi IDP camp and [REDACTED]. It explains that the witness ran away during the attack and fears that he will be ostracised in his community should he testify publicly. Further, the witness fears that people will stop associating with him and that he will not be able to maintain his family should he testify for the Defence.<sup>31</sup>
32. The Single Judge notes the subjective fears of the witness. He underscores that there is insufficient information in this case from which to conclude that the mere fact that someone testifies for the Defence, in and of itself, constitutes an objectively justifiable risk to that person. Further, the Chamber will make it clear at the outset of D-72's testimony that, when a witness is called by one of the parties, this does not mean that this witness has any further affiliation with this party.
33. Accordingly, and in absence of any objectively justifiable risk, the Single Judge rejects the request for Protective Measures for witness D-72.

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<sup>30</sup> This said, it is recalled that: (i) Rule 74(7)(b) of the Rules provides that the Chamber '[o]rder that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71'; and that (ii) this Chamber has considered this provision requires, at minimum, that Rule 74 witnesses be given face distortion and private session to discuss matters which risk revealing identifying or incriminating information. Oral decision granting Rule 74 assurances for P-45 and explaining the minimum scope of such assurances, 12 September 2017, ICC-02/04-01/15-T-103-Red-ENG, page 63 line 22 to page 64 line 17.

<sup>31</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, paras 47-48.

(x) *Witnesses D-76 and D-81*

34. The Defence submits that D-76 worries that the people living in his community will not understand why he is testifying for the Defence and that there will be an adverse reaction threatening his farming business and, in consequence, his livelihood.<sup>32</sup>
35. In respect of D-81 the Defence similarly submits that the witness has expressed concerns that people will not understand why he is testifying at the Court and start claiming that he took part in LRA attacks.
36. The Single Judge notes that the reasons advanced for the request for Protective Measures are subjective and based on the anxiety of how it will be perceived that the witnesses are testifying for the Defence. He recalls the finding made in paragraph 32 above. He repeats that it will be stressed during the witness's appearance before the Court that the fact that D-76 and D-81 appear as witnesses for the Defence is not indicative of any further association of the witness with any party to the proceedings.
37. Accordingly, and in absence of any objectively justifiable risk, the Single Judge rejects the requests for Protective Measures for witnesses D-76 and D-81.

(xi) *Witness D-85*

38. The Defence submits that D-85 [REDACTED], was abducted by and stayed with the LRA for about five years. [REDACTED]. The witness fears backlash from the community [REDACTED].<sup>33</sup>
39. The Single Judge considers that, upon the information provided by the Defence, there exists an objectively justifiable risk to the witness's safety and physical and

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<sup>32</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, para. 54.

<sup>33</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, paras 59-60.

psychological well-being. Accordingly, he grants the Protective Measures of face distortion, use of a pseudonym and private session for any information which could lead to the identification of witness D-85.

*(xii) Witness D-121*

40. The Defence explains that witness D-121 was in the LDU during the Abok attack and [REDACTED]. It submits that the witness fears that [REDACTED].
41. The Single Judge is conscious of the fears voiced by the witness but notes that these are only based on subjective assumptions. There are no indications of an objectively justifiable security risk should the witness testify without Protective Measures. Also, it is noted that the anticipated testimony will alleviate the witness's fears, since – if the testimony is made publicly – [REDACTED].<sup>34</sup>
42. Considering the above, the Single Judge finds that there is no objectively justifiable risk and, accordingly, rejects the request for Protective Measures for D-121.

*(xiii) Witnesses D-41 and D-42*

43. The Defence requests that witnesses D-41 and D-42, who are scheduled to testify as expert witnesses for the Defence, receive provisional Protection Measures. The Defence submits that it has not yet concluded its discussions with both witnesses regarding their potential concerns. Accordingly, it does not provide any concrete information. Although both witnesses have been named in the proceedings so far, the Defence asserts that it is not obvious that they are defence witnesses.<sup>35</sup>

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<sup>34</sup> UGA-D26-0025-0058 at 0066.

<sup>35</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 69.

44. The Prosecution and the CLRV submit that the fact that D-41 and D-42 are supposed to testify as expert witnesses for the Defence is already public, due to statements made in public session.
45. The Single Judge notes that both witnesses have been identified as expert witnesses for the Defence in open session by the Prosecution and Defence alike.<sup>36</sup> While the Single Judge appreciates that – in response to the submissions made by the Prosecution and CLRV – the Defence has requested that the public versions of any transcript revealing their status as expert witnesses to the Defence be blocked,<sup>37</sup> he also notes that the transcripts in question are from March 2018, over 3 months ago. It is reasonable to assume that their status as Defence expert witnesses is sufficiently known to the public to make any protective measures ineffectual.
46. But more importantly, the Single Judge notes that the Defence has not even contacted the expert witnesses about their views on testifying publicly in this case and that any submission on fears of both witnesses is entirely speculative. Accordingly, the Single Judge does not find an objectively justifiable risk should both witnesses testify publicly and rejects the request for Protective Measures for D-41 and D-42.

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<sup>36</sup> *See only*, Transcript of 19 March 2018, ICC-02/04-01/15-T-162-CONF-ENG, p. 18, lines 22-24 and transcript of 20 March 2018, ICC-02/04-01/15-T-162-CONF-ENG, p.61, lines 19-22. Both exchanges were done in public session.

<sup>37</sup> E-mail by a member of the Defence team to the Chamber, parties and Registry, 21 June 2018, at 16:19.

## 2) *Requests for Special Measures*

47. The Defence further requests that witness D-85 receives special measures in form of a support person during the witness's testimony or mental health care.<sup>38</sup>
48. The Single Judge recalls the Protective and Special Measures Decision regarding the provision of special measures pursuant to Rule 88 of the Rules.<sup>39</sup> Specifically, he repeats that the Victims and Witness Unit ('VWU') is best placed to assess and determine the appropriateness of any Rule 88 measure.<sup>40</sup>
49. Considering that the request for special measures is unopposed, the Single Judge hereby grants the request for special measures for D-85 as determined necessary by the VWU. As has been stated previously, this authorization is 'subject to any countervailing considerations which may justify a revised assessment.'<sup>41</sup> The procedure laid out in paragraph 54 of the Protective and Special Measures Decision shall apply.
50. As a more general consideration, the Single Judge directs the VWU to inform the parties and the Chamber immediately should it consider that special measures are necessary for any other witness called by the Defence. The same procedure as during the evidence presentation of the Prosecution applies, that is: should the VWU (after having conducted the vulnerability assessment for each witness) decide that special measures are necessary it is to inform the Chamber and the parties immediately of the kind and extent of the special measures. This includes the function and role of a support person, should the VWU consider such assistance necessary.

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<sup>38</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 61.

<sup>39</sup> Protective and Special Measures Decision, ICC-02/04-01/15-612-Red, paras 52-54.

<sup>40</sup> It is recalled that the 'Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial', which is applicable in this case, foresees that the VWU is the focal point for the process of obtaining special measures pursuant to Rule 88 of the Rules. ICC-02/04-01/15-504-Anx1, paras 41-52.

<sup>41</sup> Protective and Special Measures Decision, ICC-02/04-01/15-612-Red, paras 54.

### 3) *Rule 75 notice*

51. Regarding the request for Rule 75 Assurances, the Single Judge understands the relief sought as the Defence requesting that the Chamber inform these witnesses at the outset of their testimony that the privilege under Rule 75 of the Rules<sup>42</sup> exists and that they may invoke it during their testimony. The Single Judge notes the Prosecution's undertaking not to rely on the testimony of these four witnesses as incriminating evidence in any future proceedings against Mr Kony before this Court.<sup>43</sup> However, this – unlike argued by the Prosecution<sup>44</sup> – does not render the Rule 75 Assurances unnecessary.
52. The purpose of Rule 75 of the Rules is not entirely remedied by these guarantees. The avoidance of a situation where a person can be prosecuted with help of incriminating evidence provided by a spouse, child or parent of this person is just one of the objectives of the rule. Rule 75 of the Rules also aims to avoid putting a person, who is presumed to have a close personal relationship with an accused, under undue emotional and moral stress of being forced to provide evidence incriminating the accused. The provision aims to protect the integrity of this relationship by avoiding situations where the witness has to choose between telling the truth and protecting his or her relationship with the accused.<sup>45</sup> This is also evidenced by the right of the witness prescribed in the second sentence of Rule 75(1) of the Rules: if the witness thinks that the integrity of the relationship is unaffected or does not have such considerations at all, he or

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<sup>42</sup> Rule 75 is entitled 'Incrimination by family members' and provides as follows:

1. A witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement.

2. In evaluating the testimony of a witness, a Chamber may take into account that the witness, referred to in sub-rule 1, objected to reply to a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

<sup>43</sup> Response, ICC-02/04-01/15-1283-Corr-Red, para. 12.

<sup>44</sup> Response, ICC-02/04-01/15-1283- Corr-Red, para. 11.

<sup>45</sup> *See in the same vein*, oral decision by Trial Chamber VII in *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, ICC-01/05-01/13-T-37-Red-ENG, page 12, line 10 to page 13, line 15.

she may choose to make an incriminating statement. For these reasons, although appreciated, the Single Judge is of the view that the undertaking by the Prosecution does not render the Rule 75 Assurances unnecessary.

53. The next issue is to decide whether Rule 75 of the Rules applies in this specific situation. The wording of Rule 75(1) of the Rules refers to 'an accused person', which indicates that the accused does not necessarily have to be the accused in the case in which the witness is testifying. This also aligns with the purpose of Rule 75 of the Rules as explained above: for the witness it does not matter that the accused is not an accused in this trial but in another before the Court. He or she knows that proceedings against this person have been initiated. The dilemma of having to choose between telling the truth and protecting the relationship with that accused person by not providing an incriminating statement remains the same.
54. As to the argument of the CLRV that Mr Kony is not an 'accused' but merely a suspect in another case<sup>46</sup> the Single Judge finds that Rule 75 of the Rules must equally apply to persons who are suspects. Otherwise, a witness coming to testify during the confirmation phase of the proceeding would lose the benefit of Rule 75 he/she would have had at the trial stage since, during the confirmation phase, the person is not an accused yet. The change of the status of the person against whom proceedings are initiated from 'suspect' to 'accused' does not warrant a distinction. For the witness, testifying in either phase creates identical concerns and, therefore, no differentiation of treatment is justified.
55. Witnesses D-110, D-130 and D-131 are all biological children of Joseph Kony. Accordingly, the Single Judge finds that Rule 75 of the Rules applies. Before the

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<sup>46</sup> CLRV Response, ICC-02/04-01/15-1286-Conf, para. 16.



beginning of their respective testimonies, each witness will be informed of the right contained in Rule 75 of the Rules.

56. With regard to witness D-6, the Defence submits that she is the biological mother of one of Joseph Kony's children scheduled to testify for the Defence.<sup>47</sup> The Defence does not submit that D-6 is still the spouse of Joseph Kony or has a relationship of similar character with him. It argues that the fact that she is the mother of a person eligible for an assurance under Rule 75 of the Rules makes the rule equally applicable to her.<sup>48</sup>
57. The Single Judge is of the view that this would stretch Rule 75 beyond its stated ambit. As explained above, the purpose of Rule 75 of the Rules is to avoid conflicts the witness might have between the allegiance resulting from an emotional and social relationship with an accused and the duty to tell the truth. It does not envisage extending the Rule 75 assurances to individuals who have a close relationship with a witness entitled to such an assurance. Accordingly, the Single Judge rejects the Request to provide Rule 75 Assurances.

#### **FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**ORDERS** the Prosecution and CLRV to request reclassification of their response as 'public' or file public-redacted versions thereof;

**ORDERS** that, in accordance with Rule 87 of the Rules, the following witnesses be referred, in their capacity as witnesses in these proceedings, only by their respective pseudonyms in public filings and public sessions of the trial, and provide their testimony before the Chamber with face distortion vis-à-vis the public and in private

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<sup>47</sup> Request, ICC-02/04-01/15-1273-Conf-Corr, para. 77.

<sup>48</sup> Request, ICC-02/04-01/15-1273-Corr-Red, para. 78.

session for any information which could lead to their identification: witnesses D-6, D-110, D-130, D-131 and D-85;

**DECLARES** that the Protective Measures for D-32 and D-135 are still in force;

**GRANTS** the request for special measures for witness D-85 in the procedure laid out in paragraph 49 above;

**ESTABLISHES** the procedure laid out in paragraph 50 above for any other determination of the application of special measures by the VWU; and

**DECIDES** that D-110, D-130 and D-131 fall under Rule 75 of the Rules and that they will be informed of this right before the start of their testimonies;

**REJECTS** the Request regarding the Protective Measures for D-7, D-25, D-30, D-75, D-26, D-27, D-33, D-36, D-72, D-76, D-81, D-121, D-41 and D-42 and the Request to decide that D-6 receives the right provided for in Rule 75 of the Rules

Done in both English and French, the English version being authoritative.

  
**Judge Bertram Schmitt, Single Judge**

Dated 5 July 2018

At The Hague, The Netherlands